IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 25TH JUNE 2007 / 4TH ASHADHA 1929

WP(C).No. 12002 of 2007(D)

OS.5/2002 of SUB COURT,KOTTARAKKARA

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PETITIONER:

M/S.ASOK LEYLAND FINANCE LTD.,
A COMPANY INCORPORATED UNDER THE INDIAN COMPANIES ACT 1956 WITH ITS OFFICE AT 86, CHAMIERS ROAD, CHENNAI-18, REPRESENTED BY ITS LEGAL EXECUTIVE B.M.LAKSHMANAN, 34/138 B, BYE PASS NORTH END, EDAPPALLY, KOCHI-24.

BY ADV. SRI.K.K.GOPINATHAN NAIR
SRI.M.R.JAYAPRASAD
SRI.K.K.RAJEEV

RESPONDENTS:

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1. RAJENDRAN NAIR, ANANDA BHAVANAM, KARAVALOOR VILLAGE, PATHANAPURAM, KOLLAM DISTRICT.

2. MANOJ V., VINOD BHAVAN, PATHIRIKKAL MURI, PATHANAPURAM, KOLLAM DISTRICT.

3. KURUVILA ABRAHAM @ ANIYACHAN, ATTUMMEL VARAMBATH VEEDU, C/O.JOSE RAJ PETROL PUMP, PUNALUR, KOLLAM DISTRICT.

R2 BY ADV. SRI.PIRAPPANCODE V.S.SUDHIR
R1 SRI.K.G.BALASUBRAMANIAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 25/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXTS:

EXT.P1: TRUE COPY OF THE JUDGMENT DT.20.2.2004 IN O.P.NO: 12553/2003

EXT.P2: -DO- OF THE ORDER DT.20.2.2007 IN I.A.NO:1583/2004 IN O.S.NO: 5/2002 OF THE SUB COURT, KOTTARAKKARA

jj /TRUE COPY/

PA. TO JUDGE

M.N.KRISHNAN, J.

WP(C)No. 12002 OF 2007 D

Dated this the 25th June, 2007.

JUDGMENT

This writ petition is filed with a prayer to dispose of O.S.5/02 pending before the Subordinate Judge's Court, Kottarakara and to issue a direction to the Sub Court, Kottarakara to give interim custody of tanker lorry No: KL-02/M-559 to the petitioner till the disposal of the suit etc. The learned Subordinate Judge, Kottaraka disposed of the matter holding that since the third respondent herein has furnished this lorry as a security in O.S.5/02 before the Hon'ble High Court in C.M.A.70/2002, it cannot consider release of the vehicle at that stage to the present writ petitioner and therefore, dismissed the application. The brief facts necessary for the disposal are stated as follows:

2. It is the case of the writ petitioner that it advanced loan and as a financier under the hire purchase agreement he is the owner of the vehicle and the third respondent in the writ petition has only to ply the vehicle and ownership will get vested in him only if he pays the entire amount. So, it is the clear case of the writ petitioner that it is the owner of the lorry. While so, the first respondent herein filed a suit against third

respondent herein for realisation of money and moved an application for injunction. It was submitted that the Ambassador car was ordered to be not transferred but it was held that the lorry mentioned therein had already been transferred and so no relief was granted. Against that order a C.M.A.70/2002 was filed before this Court. In this Court the third respondent furnished the lorry which is in dispute in this writ petition as a security and therefore, it was accepted by this Court and the matter was closed. Meanwhile, the second respondent filed a suit against third respondent in the writ petition as O.S.423/02 before the Munsiff's Court, Punalur for realisation of the money and in that case an order of attachment was passed with respect to this vehicle and I am informed that the said suit had been dismissed but the vehicle still remains in the police station. It is under these circumstances the writ petitioner has moved the Sub Court for release of the vehicle and it has been disposed of as stated by me earlier for the reason that the said vehicle had been offered as a security by the present third respondent to the first respondent. In a case of this nature, in order to have attachment or restrict alienation of the vehicle it is the ownership of the vehicle that has to be looked into. Just because third respondent submitted before this Court

that he is furnishing the vehicle as a security, one cannot jump to the conclusion that he is the title holder of the vehicle when the real title holders come and claims, it is a matter that has to be adjudicated. Therefore, I direct the Subordinate Judge, Kottarakara to consider the entire matter afresh and if it is satisfied that the present writ petitioner is the owner of the vehicle then there is absolutely no bar in releasing the vehicle in favour of it for the reason that the person who had furnished it as security have no such right to offer it as a security. Writ petition is disposed of accordingly and the present writ petitioner stands impleaded as a party in the application filed before the Sub Court and therefore all the parties are directed to appear before the Subordinate Judge's Court, Kottarakara on 12.7.2007 and the learned Subordinate Judge is directed to dispose of the matter afresh within a period of one month from that date.

M.N.KRISHNAN
Judge

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